

PART 312—PROHIBITION OF DISCRIMINATORY PRACTICES IN WATER RESOURCE DEVELOPMENT PROJECTS

Sec.

312.1 Areas covered.

312.2 Discriminatory practices prohibited.

AUTHORITY: Sec. 4, 58 Stat. 889, as amended; 16 U.S.C. 460d.

§ 312.1 Areas covered.

The regulation covered in this part shall be applicable to all water resource project lands under the supervision of the Secretary of the Army not covered in parts 311 and 326, of this title.

[29 FR 9710, July 18, 1964]

§ 312.2 Discriminatory practices prohibited.

All project land and water areas which are open to the public shall be available for use and enjoyment by the public without regard to race, creed, color or national origin. Each lessee or licensee of a project area under lease or license providing for a public or quasi-public use, including group camp activities, and each concessionaire of a lessee or licensee providing a service to the public including facilities and accommodations, shall not discriminate against any person or persons because of race, creed, color or national origin in the conduct of its operations under the lease, license or concession agreement.

[29 FR 9710, July 18, 1964]

PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Sec.

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AUTHORITY: The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1); 16 U.S.C. 460d and 4601-6a.

SOURCE: 50 FR 35556, Sept. 3, 1985, unless otherwise noted.

§ 327.0 Applicability.

The regulations covered in this part 327 shall be applicable to water resource development projects, completed or under construction, administered by the Chief of Engineers, and to those portions of jointly administered water resource development projects which are under the administrative jurisdiction of the Chief of Engineers. All other Federal, State and local laws and regulations remain in full force and effect where applicable to those water resource development projects.

§ 327.1 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term *District Engineer* shall include the authorized representatives of the District Engineer.

(c) The term *project* or *water resource development project* refers to the water areas of any water resource development project administered by the Chief

of Engineers, without regard to ownership of underlying land, to all lands owned in fee by the Federal Government and to all facilities therein or thereon of any such water resource development project.

(d) All water resource development projects open for public use shall be available to the public without regard to sex, race, color, creed, age, nationality or place of origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, age, nationality or place of origin in the conduct of the operations under the lease, license or concession contract.

(e) In addition to the regulations in this part 327, all applicable Federal, state and local laws and regulations remain in full force and effect on project lands or waters which are outgranted by the District Engineer by lease, license or other written agreement.

(f) The regulations in this part 327 shall be deemed to apply to those lands and waters which are subject to treaties and Federal laws and regulations concerning the rights of Indian Nations and which lands and waters are incorporated, in whole or in part, within water resource development projects administered by the Chief of Engineers, to the extent that the regulations in this part 327 are not inconsistent with such treaties and Federal laws and regulations.

(g) Any violation of any section of this part 327 shall constitute a separate violation for each calendar day in which it occurs.

(h) For the purposes of this part 327, the owner of any unattended vehicle, vessel or aircraft as described herein shall be presumed to be responsible for its use on project property. Unless proven otherwise, such presumption will be sufficient to issue a citation for the violation of regulations applicable to the use of such vehicle, vessel or aircraft as provided for in § 327.25, Violation of Rules and Regulations.

§ 327.2 Vehicles.

(a) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies,

all-terrain vehicles and trailers, campers, bicycles or any other such equipment.

(b) Vehicles shall not be parked in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, project property or environmental feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) The operation and/or parking of a vehicle off authorized roadways is prohibited except at locations and times designated by the District Engineer. Taking any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier is prohibited.

(d) Vehicles shall be operated only in accordance with posted regulations and applicable Federal, state and local laws, which shall be enforced by authorized enforcement officials.

(e) No person shall operate any vehicle in a careless, negligent or reckless manner so as to endanger any person, project property or environmental feature.

(f) At developed recreation areas, vehicles shall be used only to enter or leave the area or individual sites or facilities unless otherwise posted.

(g) Except as authorized by the District Engineer, no person shall operate any motorized vehicle without a proper and effective exhaust muffler as defined by state and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§ 327.3 Vessels.

(a) This section pertains to all vessels or watercraft, including, but not limited to, powerboats, cruisers, houseboats, sailboats, rowboats, canoes, kayaks, jetskis and any other such equipment capable of navigation on water, whether in motion or at rest.

(b) The placement and/or operation of any vessel or watercraft for a fee or profit upon project waters or lands is prohibited except as authorized by permit, lease, license, or concession contract with the Department of the

Army. This paragraph (§327.3(b)) shall not apply to the operation of commercial tows or passenger carrying vessels not based at a Corps project which utilize project waters as a link in continuous transit over navigable waters of the United States.

(c) Vessels or other watercraft may be operated on the project waters, except in prohibited or restricted areas, in accordance with posted regulations, including buoys, and applicable Federal, state and local laws, as regulated by authorized enforcement officials. All vessels or watercraft so required by applicable Federal, state and local laws shall display an appropriate registration on board whenever the vessel is operated on project waters.

(d) The operation of vessels or other watercraft in a careless, negligent or reckless manner so as to endanger any property or person (including the operator and/or user(s) of the vessel or watercraft) is prohibited.

(e) All vessels, when in use, shall have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements (Coast Guard Pamphlet CG-290; 46 CFR parts 25, 30; 33 CFR part 175) and in compliance with boating safety laws issued and enforced by the state in which the vessel is being operated.

(f) Unless otherwise permitted by Federal, state or local law, vessels or other watercraft, while moored in commercial facilities, community or corporate docks, or at any fixed or permanent mooring point, may only be used for overnight occupancy when such use is incidental to recreational boating. Vessels or other watercraft are *not* to be used as a place of habitation or residence.

(g) Water skis, parasails, ski-kites and similar devices are permitted in nonrestricted areas except that they may not be used in a careless, negligent, or reckless manner so as to endanger any property or person (including the user and/or operator of the towing vessel).

(h) All vessels when not in actual use shall be removed from project lands and water unless securely moored or stored at designated areas approved by the District Engineer. The placing of

floating or stationary mooring facilities on, adjacent to, or interfering with a buoy, channel marker or other navigational aid is prohibited.

(i) The use at a project of any vessel not constructed or maintained in compliance with the standards and requirements established by the Federal Safe Boating Act of 1971 (Pub. L. 92-75, 85 Stat. 213), or promulgated pursuant to such act, is prohibited.

(j) Except as authorized by the District Engineer, no person shall operate any vessel or watercraft without a proper and effective exhaust muffler as defined by State and local laws, or with an exhaust muffler cutout open, or in any other manner which renders the exhaust muffler ineffective in muffling the sound of engine exhaust.

§327.4 Aircraft.

(a) This section pertains to all aircraft including, but not limited to, airplanes, seaplanes, helicopters, ultralight aircraft, motorized hang gliders, hot air balloons, any non-powered flight devices or any other such equipment.

(b) The operation of aircraft on project lands at locations other than those designated by the District Engineer is prohibited. This provision shall not be applicable to aircraft engaged on official business of Federal, state or local governments or law enforcement agencies, aircraft used in emergency rescue in accordance with the directions of the District Engineer or aircraft forced to land due to circumstances beyond the control of the operator.

(c) No person shall operate any aircraft while on or above project waters or project lands in a careless, negligent or reckless manner so as to endanger any person or property.

(d) Nothing in this section (§327.4) bestows authority to deviate from rules and regulations or prescribed standards of the appropriate State Aeronautical Agency, or the Federal Aviation Administration, including, but not limited to, regulations and standards concerning pilot certifications or ratings, and airspace requirements.

(e) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person, material or equipment by parachute, helicopter or other means onto project lands or waters without written permission of the District Engineer is prohibited.

(f) In addition to the above provisions, seaplanes, as defined below, are subject to the following restrictions:

(1) Such use is limited to aircraft utilized for water landings and takeoff, herein called seaplanes, at the risk of the owner, operator and passenger(s).

(2) Seaplane operations contrary to the prohibitions or restrictions established by the District Engineer (pursuant to part 328 of title 36) are prohibited. The responsibility to ascertain whether seaplane operations are prohibited or restricted is incumbent upon the person(s) contemplating the use of, or using, such waters.

(3) All operations of seaplanes while upon project waters shall be in accordance with marine rules of the road for power boats or vessels and §327.3 Vessels.

(4) Seaplanes on project waters and lands in excess of 24 hours shall be securely moored at mooring facilities and at locations permitted by the District Engineer. Seaplanes may be temporarily moored on project waters and lands, except in areas prohibited by the District Engineer, for periods less than 24 hours providing that (i) the mooring is safe, secure, and accomplished so as not to damage the rights of the Government or members of the public and (ii) the operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(5) Commercial operation of seaplanes from project waters is prohibited without written approval of the District Engineer following consultation with and necessary clearance from the Federal Aviation Administration (FAA) and other appropriate public authorities and affected interests.

(6) Seaplanes may not be operated at Corps projects between sunset and sunrise unless adequate lighting and supervision approved by the District Engineer are available.

§327.5 Swimming.

(a) Swimming, diving, snorkling or scuba diving at one's own risk is permitted, except at launching sites, designated mooring points and other areas so designated by the District Engineer. Diving or jumping from bridges or other structures which cross project waters is prohibited.

(b) An international diving flag must be displayed during underwater activities.

§327.6 Picnicking.

Picnicking and related day-use activities are permitted, except in those areas where prohibited by the District Engineer.

§327.7 Camping.

(a) Camping is permitted only at sites and/or areas designated by the District Engineer.

(b) Camping at one or more campsites at any one water resource project for a period longer than 14 days during any 30-consecutive-day period is prohibited without the written permission of the District Engineer.

(c) The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(d) The digging or leveling of any ground or the construction of any structure without written permission of the District Engineer is prohibited.

§327.8 Hunting, fishing, and trapping.

Hunting, fishing, and trapping are permitted except in areas where prohibited by the District Engineer. All Federal, state and local laws governing these activities apply on project lands and waters, as regulated by authorized enforcement officials.

§327.9 Sanitation.

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on the project and incidental to authorized recreational activities shall be either removed from the project or deposited in receptacles

provided for that purpose. The improper disposal of such wastes, human and animal waste included, on the project is prohibited.

(b) It is a violation to bring onto a project any household or commercial garbage, trash, rubbish, debris, dead animals or litter of any kind for disposal or dumping without the written permission of the District Engineer.

(c) The spilling, pumping or other discharge of contaminants, pollutants or other wastes, including, but not limited to, human or animal waste, petroleum, industrial and commercial products and by-products, on project lands or into project waters is prohibited.

(d) Campers, picnickers, and all other persons using a water resource development project shall keep their sites free of trash and litter during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

(e) The discharge or placing of sewage, galley waste, garbage, refuse, or pollutants into the project waters from any vessel or watercraft is prohibited.

§ 327.10 Fires.

(a) Gasoline and other fuels, except that which is contained in storage tanks of vehicles, vessels, camping equipment, or hand portable containers designed for such purpose, shall not be carried onto or stored on the project without written permission of the District Engineer.

(b) Fires shall be confined to those areas designated by the District Engineer, and shall be contained in fireplaces, grills, or other facilities designated for this purpose. Fires shall not be left unattended and must be completely extinguished prior to departure. The burning of materials that produce toxic fumes, including, but not limited to, tires, plastic or treated wood products is prohibited.

(c) Improper disposal of lighted smoking materials, matches or other burning material is prohibited.

§ 327.11 Control of animals.

(a) No person shall bring or allow dogs, cats, or other pets into developed recreation areas unless penned, caged, on a leash under 6 feet in length, or otherwise physically restrained. No

person shall allow animals to impede or restrict otherwise full and free use of project lands and waters by the public. All animals and pets are prohibited in swimming beaches. Animals and pets, except properly trained animals assisting the handicapped (such as seeing-eye dogs), are prohibited in sanitary facilities or other areas so designated by the District Engineer. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with state and local laws.

(b) Persons bringing or allowing pets in designated public use areas shall be responsible for proper removal and disposal, in sanitary facilities, of any waste produced by these animals.

(c) No person shall bring or allow horses, cattle, or other livestock in camping, picnicking, swimming or other recreation areas except in areas designated by the District Engineer.

(d) Ranging, grazing, watering or allowing livestock on project lands and waters is prohibited except when authorized by lease, license or other written agreement with the District Engineer.

(e) Unauthorized livestock are subject to impoundment and removal in accordance with Federal, state and local laws.

(f) Any animal impounded under the provisions of this section may be confined at a location designated by the District Engineer, who may assess a reasonable impoundment fee. This fee shall be paid before the impounded animal is returned to its owner(s).

§ 327.12 Restrictions.

(a) The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the public use of a project or portion of a project. The District Engineer may close or restrict the use of a project or portion of a project when necessitated by reason of public health, public safety, maintenance, or other reasons in the public interest. Entering or using a project in a manner which is contrary to the schedule of visiting hours, closures or restrictions is prohibited.

(b) Quiet shall be maintained in all public use areas between the hours of

10 p.m. and 6 a.m., or those hours designated by the District Engineer. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of the project or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on project lands or waters may be requested to leave the project.

(d) The operation or use of any audio or other noise producing device including, but not limited to, radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to unreasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

§ 327.13 Explosives, firearms, other weapons and fireworks.

The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, explosives or explosive devices of any kind, including fireworks, is prohibited unless:

(a) In the possession of a Federal, state or local law enforcement officer;

(b) Being used for hunting or fishing as permitted under § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;

(c) Being used at authorized shooting ranges; or

(d) Written permission has been received from the District Engineer.

§ 327.14 Public property.

(a) Destruction, injury, defacement, removal or any alteration of public property including, but not limited to, developed facilities, natural formations, mineral deposits, historical and archaeological features, and vegetative growth, is prohibited except when in accordance with written permission of the District Engineer.

(b) Cutting or gathering of trees or parts of trees and/or the removal of wood from project lands is prohibited without written permission of the District Engineer.

(c) Gathering of dead wood on the ground for use in designated recreation areas as firewood is permitted.

§ 327.15 Abandonment and impoundment of personal property.

(a) Personal property of any kind shall not be abandoned, stored or left unattended upon project lands or waters. After a period of 24 hours, or at any time after a posted closure hour in a public use area, unattended personal property shall be presumed to be abandoned and may be impounded and stored at a storage point designated by the District Engineer, who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.

(b) The District Engineer shall, by public or private sale or otherwise, dispose of all lost, abandoned or unclaimed personal property that comes into Government custody or control. However, property may not be disposed of until diligent effort has been made to find the owner, heirs, next of kin or legal representative(s). If the owner, heirs, next of kin or legal representative(s) are determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at the last known address. When diligent efforts to determine the owner, heirs, next of kin or legal representative(s) are unsuccessful, the property may be disposed of without delay except that if it has a fair market value of \$25 or more the property may not be disposed of until 90 days after the date it is received at the storage point designated by the District Engineer. The net proceeds from the sale of property shall be covered into the Treasury of the United States as miscellaneous receipts.

(c) Personal property placed on Federal lands or waters adjacent to a private residence and/or developments of any private nature for more than 24 hours without permission of the District Engineer shall be presumed to have been abandoned and, unless proven otherwise, such presumption will be

sufficient to issue a citation as provided for in §327.25.

§ 327.16 Lost and found articles.

All articles found shall be deposited by the finder at the Resource Manager's office or with a ranger. All such articles shall be disposed of in accordance with the procedures set forth in §327.15.

§ 327.17 Advertisement.

Advertising by the use of billboards, signs, markers, audio devices, handbills, circulars, posters, or any other means whatsoever, is prohibited without written permission of the District Engineer. Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

§ 327.18 Commercial activities.

The engaging in or solicitation of business without the express written permission of the District Engineer is prohibited.

§ 327.19 Permits.

(a) It shall be a violation of these regulations to refuse to or fail to comply with the fee requirements or other terms or conditions of any permit issued under the provisions of this part 327.

(b) Permits for floating structures (issued under the authority of §327.30) of any kind on/in waters of water resources development projects, whether or not such waters are deemed navigable waters of the United States but where such waters are under the management of the Corps of Engineers, shall be issued at the discretion of the District Engineer under the authority of this regulation. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the appropriate Resource Manager's office.

(c) Permits for nonfloating structures (issued under the authority of §327.30) of any kind constructed, placed in or affecting waters of water resource

development projects where such waters are deemed navigable waters of the U.S. shall be issued under the provisions of section 10 of the Act approved March 3, 1899 (33 U.S.C. 403). If a discharge of dredged or fill material in these waters is involved, a permit is required under section 404 of the Clean Water Act (33 U.S.C. 1344). (See 33 CFR parts 320-330).

(d) Permits for nonfloating structures (issued under the authority of §327.30) of any kind in waters of water resource development projects, where such waters are under the management of the Corps of Engineers and where such waters are not deemed navigable waters of the United States shall be issued as set forth in paragraph (b) of this section. If a discharge of dredged or fill material into any water of the United States is involved, a permit is required under Section 404 of the Clean Water Act (33 U.S.C. 1344) (See 33 CFR parts 320-330). Certification may be required pursuant to section 401 of the Clean Water Act (33 U.S.C. 1341).

§ 327.20 Unauthorized structures.

The construction, placement, or existence of any structure (including, but not limited to, roads, trails, signs or landscape features) of any kind under, upon, in or over the project lands or waters is prohibited unless a permit, lease, license or other appropriate written agreement has been issued by the District Engineer. The design, construction, placement, existence or use of structures in violation of the terms of the permit, lease, license or other written agreement is prohibited. The government shall not be liable for the loss of, or damage to, any private structures, whether authorized or not, placed on project lands or waters. Unauthorized structures are subject to summary removal or impoundment by the District Engineer.

§ 327.21 Special events.

(a) Special events including, but not limited to, water carnivals, boat regattas, music festivals, dramatic presentations or other special recreation programs are prohibited unless written permission has been granted by the District Engineer. An appropriate fee

may be charged under the authority of § 327.23.

(b) The public shall not be charged any fee by the sponsor of such event unless the District Engineer has approved in writing (and the sponsor has properly posted) the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require removal of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission or the regulations in this part 327.

§ 327.22 Unauthorized occupation.

(a) Occupying any lands, buildings, vessels or other facilities within water resource development projects for the purpose of maintaining same as a full- or part-time residence without the written permission of the District Engineer is prohibited. The provisions of this section shall not apply to the occupation of lands for the purpose of camping, in accordance with the provisions of § 327.7.

(b) Use of project lands or waters for agricultural purposes is prohibited except when in compliance with terms and conditions authorized by lease, license or other written agreement issued by the District Engineer.

§ 327.23 Recreation use fees.

(a) In accordance with 16 U.S.C. 4601, the Corps of Engineers is required to collect special recreation use fees and/or special permit fees for the use of specialized sites, facilities, equipment or services related to outdoor recreation furnished at Federal expense.

(b) All use fees shall be fair and equitable and will be based on the following criteria (as contained in the Land and Water Conservation Fund Act of 1965, Pub. L. 88–578, as amended):

- (1) The direct and indirect amount of Federal expenditure.
- (2) The benefit to the recipient.
- (3) The public policy or interest served.
- (4) The comparable recreation fees charged by other Federal and non-Federal public agencies and the private sector within the service area of the management unit at which the fee is charged.

(5) The economic and administrative feasibility of fee collection.

(6) The extent of regular maintenance required.

(7) Other pertinent factors.

Based upon the above criteria, it shall be the policy of the Chief of Engineers to publish in the FEDERAL REGISTER, as a general notice document, the established range of fees for specialized sites, facilities, equipment or services whenever such fees are adjusted.

(c) Where such fees are charged, the District Engineer shall insure that clear notice of fee requirements is prominently posted at each area, and at appropriate locations therein and that the notice be included in publications distributed at such areas. Failure to pay authorized recreation use fees as established pursuant to Pub. L. 88–578, 78 Stat. 897, as amended (16 U.S.C. 4601–6a), is prohibited and is punishable by a fine of not more than \$100.

(d) Any Golden Age or Golden Access Passport permittee shall be entitled, upon presentation of such a permit, to utilize special recreation facilities at a rate of 50 percent off the established use fee at federally operated areas.

(e) At each Corps lake or reservoir where camping is permitted, the District Engineer will provide at least one primitive campground, containing designated campsites, sanitary facilities and vehicular access, where no fees will be charged.

§ 327.24 Interference with Government employees.

(a) It is a Federal crime pursuant to the provisions of sections 1114 and 111 of title 18 U.S.C., to forcibly assault, resist, oppose, impede, intimidate, or interfere with any civilian official or employee of the U.S. Army Corps of Engineers engaged in the performance of his or her official duties, or on account of the performance of his or her official duties. Such actions or interference directed against a Federal employee while carrying out these regulations are also a violation of these regulations and may be a state crime pursuant to the laws of the state where they occur.

(b) Failure to comply with a lawful order issued by a Federal employee acting pursuant to these regulations

shall be considered as interference with that employee while engaged in the performance of their official duties. Such interference with a Federal employee includes failure to provide a correct name, address or other identification upon request of the Federal employee, when that employee is authorized by the District Engineer to issue citations in the performance of the employees official duties.

§ 327.25 Violation of rules and regulations.

(a) Any person who violates the provisions of these regulations, other than for a failure to pay authorized recreation use fees as separately provided for in § 327.23, may be punished by a fine of not more than \$500 or imprisonment for not more than six months or both and may be tried and sentenced in accordance with the provisions of section 3401 of title 18 U.S.C. Persons designated by the District Engineer shall have the authority to issue a citation for violation of these regulations, requiring the appearance of any person charged with the violation to appear before the United States Magistrate within whose jurisdiction the affected water resources development project is located. (16 U.S.C. 460d).

(b) Any person who commits an act against any official or employee of the U.S. Army Corps of Engineers that is a crime under the provisions of section 1114 or section 111 of title 18 U.S.C. or under provisions of pertinent state law may be tried and sentenced as further provided in Federal or state law, as the case may be.

§ 327.26 State and local laws.

Except as otherwise provided herein or by Federal law or regulation, state and local laws and ordinances shall apply on project lands and waters. This includes, but is not limited to, state and local laws and ordinances governing:

- (a) Operation and use of motor vehicles, vessels, and aircraft;
- (b) Hunting, fishing and trapping;
- (c) Use of firearms or other weapons;
- (d) Civil disobedience and criminal acts; and,
- (e) Littering, sanitation and pollution.

These state and local laws and ordinances are enforced by those state and local enforcement agencies established and authorized for that purpose.

§§ 327.27—327.29 [Reserved]

§ 327.30 Shoreline Management on Civil Works Projects.

(a) *Purpose.* The purpose of this regulation is to provide policy and guidance on management of shorelines of Civil Works projects where 36 CFR part 327 is applicable.

(b) *Applicability.* This regulation is applicable to all field operating agencies with Civil Works responsibilities except when such application would result in an impingement upon existing Indian rights.

(c) *References.* (1) Section 4, 1944 Flood Control Act, as amended (16 U.S.C. 460d).

(2) The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1)

(3) Section 10, River and Harbor Act of 1899 (33 U.S.C. 403).

(4) National Historic Preservation Act of 1966 (Pub. L. 89-665; 80 Stat. 915) as amended (16 U.S.C. 470 *et seq.*).

(5) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

(6) The Clean Water Act (33 U.S.C. 1344, *et seq.*).

(7) The Water Resources Development Act of 1986 (Pub. L. 99-662).

(8) Title 36, chapter III, part 327, Code of Federal Regulations, "Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers."

(9) Executive Order 12088 (13 Oct. 78).

(10) 33 CFR parts 320-330, "Regulatory Programs of the Corps of Engineers."

(11) ER 1130-2-400, "Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects."

(12) EM 385-1-1, "Safety and Health Requirements Manual."

(d) *Policy.* (1) It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards

to ensure a quality resource for use by the public. The objectives of all management actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.

(2) Private shoreline uses may be authorized in designated areas consistent with approved use allocations specified in Shoreline Management Plans. Except to honor written commitments made prior to publication of this regulation, private shoreline uses are not allowed on water resource projects where construction was initiated after December 13, 1974, or on water resource projects where no private shoreline uses existed as of that date. Any existing permitted facilities on these projects will be grandfathered until the facilities fail to meet the criteria set forth in § 327.30(h).

(3) A Shoreline Management Plan, as described in § 327.30(e), will be prepared for each Corps project where private shoreline use is allowed. This plan will honor past written commitments. The plan will be reviewed at least once every five years and revised as necessary. Shoreline uses that do not interfere with authorized project purposes, public safety concerns, violate local norms or result in significant environmental effects should be allowed unless the public participation process identifies problems in these areas. If sufficient demand exists, consideration should be given to revising the shoreline allocations (e.g. increases/decreases). Maximum public participation will be encouraged as set forth in § 327.30(e)(6). Except to honor written commitments made prior to the publication of this regulation, shoreline management plans are not required for those projects where construction was initiated after December 13, 1974, or on projects not having private shoreline use as of that date. In that case, a statement of policy will be developed by the district commander to present the shoreline management policy. This

policy statement will be subject to the approval of the division commander. For projects where two or more agencies have jurisdiction, the plan will be cooperatively prepared with the Corps as coordinator.

(4) Where commercial or other public launching and/or moorage facilities are not available within a reasonable distance, group owned mooring facilities may be allowed in Limited Development Areas to limit the proliferation of individual facilities. Generally only one permit will be necessary for a group owned mooring facility with that entity, if incorporated, or with one person from the organization designated as the permittee and responsible for all moorage spaces within the facility. No charge may be made for use of any permitted facility by others nor shall any commercial activity be engaged in thereon.

(5) The issuance of a private shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of permitted facilities may take necessary precautions to protect their property from theft, vandalism or trespass, but may in no way preclude the public right of pedestrian or vessel access to the water surface or public land adjacent to the facility.

(6) Shoreline Use Permits will only be issued to individuals or groups with legal right of access to public lands.

(e) *Shoreline Management Plan—*

(1) *General.* The policies outlined in § 327.30(d) will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

(2) *Preparation.* A Shoreline Management Plan is prepared as part of the Operational Management Plan. A moratorium on accepting applications for new permits may be placed in effect from the time an announcement of creation of a plan or formal revision of a plan is made until the action is completed.

(3) *Approval.* Approval of Shoreline Management Plans rests with division commanders. After approval, one copy of each project Shoreline Management

Plan will be forwarded to HQUSACE (CECW-ON) WASH DC 20314-1000. Copies of the approved plan will also be made available to the public.

(4) *Scope and Format.* The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in § 327.30(e)(6), related rules and regulations, a discussion of what areas are open or closed to specific activities and facilities, how to apply for permits and other information pertinent to the Corps management of the shoreline. The plan will be prepared in sufficient detail to ensure that it is clear to the public what uses are and are not allowed on the shoreline of the project and why. A process will be developed and presented in the Shoreline Management Plan that prescribes a procedure for review of activities requested but not specifically addressed by the Shoreline Management Plan.

(5) *Shoreline Allocation.* The entire shoreline will be allocated within the classifications below and delineated on a map. Any action, within the context of this rule, which gives a special privilege to an individual or group of individuals on land or water at a Corps project, that precludes use of those lands and waters by the general public, is considered to be private shoreline use. Shoreline allocations cover that land and/or water extending from the edge of the water and waterward with the exception of allocations for the purpose of vegetation modification which extends landward to the project boundary. These allocations should complement, but certainly not contradict, the land classifications in the project master plan. A map of sufficient size and scale to clearly display the shoreline allocations will be conspicuously displayed or readily available for viewing in the project administration office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination but the information contained on these must be identical to that contained on the display map in the project administration office. No changes will be made to these maps except through the formal update process. District commanders may add specific constraints and identify areas having unique characteristics

during the plan preparation, review, or updating process in addition to the allocation classifications described below.

(i) *Limited Development Areas.* Limited Development Areas are those areas in which private facilities and/or activities may be allowed consistent with § 327.30(h) and appendix A. Modification of vegetation by individuals may be allowed only following the issuance of a permit in accordance with appendix A. Potential low and high water conditions and underwater topography should be carefully evaluated before shoreline is allocated as Limited Development Area.

(ii) *Public Recreation Areas.* Public Recreation Areas are those areas designated for commercial concessionaire facilities, Federal, state or other similar public use. No private shoreline use facilities and/or activities will be permitted within or near designated or developed public recreation areas. The term "near" depends on the terrain, road system, and other local conditions, so actual distances must be established on a case by case basis in each project Shoreline Management Plan. No modification of land forms or vegetation by private individuals or groups of individuals is permitted in public recreation areas.

(iii) *Protected Shoreline Areas.* Protected Shoreline Areas are those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to prevent development in areas that are subject to excessive siltation, erosion, rapid dewatering, or exposure to high wind, wave, or current action and/or in areas in which development would interfere with navigation. No Shoreline Use Permits for floating or fixed recreation facilities will be allowed in protected areas. Some modification of vegetation by private individuals, such as clearing a narrow meandering path to the water, or limited mowing, may be allowed only following the issuance of a permit if the resource manager determines that the activity will not adversely impact the environment or physical characteristics for which the area was designated as protected. In making this determination the effect

on water quality will also be considered.

(iv) *Prohibited Access Areas.* Prohibited Access Areas are those in which public access is not allowed or is restricted for health, safety or security reasons. These could include hazardous areas near dams, spillways, hydro-electric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in Prohibited Access Areas.

(6) *Public Participation.* District commanders will ensure public participation to the maximum practicable extent in Shoreline Management Plan formulation, preparation and subsequent revisions. This may be accomplished by public meetings, group workshops, open houses or other public involvement techniques. When master plan updates and preparation of the Shoreline Management Plans are concurrent, public participation may be combined and should consider all aspects of both plans, including shoreline allocation classifications. Public participation will begin during the initial formulation stage and must be broad-based to cover all aspects of public interest. The key to successful implementation is an early and continual public relations program. Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency. Special care will be taken to advise citizen and conservation organizations; Federal, state and local natural resource management agencies; Indian Tribes; the media; commercial concessionaires; congressional liaisons; adjacent landowners and other concerned entities during the formulation of Shoreline Management Plans and subsequent revisions. Notices shall be published prior to public meetings to assure maximum public awareness. Public notices shall be issued by the district commander allowing for a minimum of 30 days for receipt of written public comment in regard to the proposed Shoreline Management Plan or any major revision thereto.

(7) *Periodic Review.* Shoreline Management Plans will be reviewed periodically, but no less often than every

five years, by the district commander to determine the need for update. If sufficient controversy or demand exists, consideration should be given, consistent with other factors, to a process of reevaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process. Cumulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered. District commanders may make minor revisions to the Shoreline Management Plan when the revisions are consistent with policy and funds for a complete plan update are not available. The amount and type of public involvement needed for such revision is at the discretion of the district commander.

(f) *Instruments for Shoreline Use.* Instruments used to authorize private shoreline use facilities, activities or development are as follows:

(1) *Shoreline Use Permits.* (i) Shoreline Use Permits are issued and enforced in accordance with provisions of 36 CFR 327.19.

(ii) Shoreline Use Permits are required for private structures/activities of any kind (except boats) in waters of Civil Works projects whether or not such waters are deemed navigable and where such waters are under the primary jurisdiction of the Secretary of the Army and under the management of the Corps of Engineers.

(iii) Shoreline Use Permits are required for non-floating structures on waters deemed commercially non-navigable, when such waters are under management of the Corps of Engineers.

(iv) Shoreline Use Permits are also required for land vegetation modification activities which do not involve disruption to land form.

(v) Permits should be issued for a term of five years. To reduce administration costs, one year permits should be issued only when the location or nature of the activity requires annual reissuance.

(vi) Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse.

(2) *Department of the Army Permits.* Dredging, construction of fixed structures, including fills and combination fixed-floating structures and the discharge of dredged or fill material in waters of the United States will be evaluated under authority of section 10, River and Harbor Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344). Permits will be issued where appropriate.

(3) *Real Estate Instruments.* Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the appropriate real estate element. Shoreline Management Plans should identify the types of activities that require real estate instruments and indicate the general process for obtaining same. Shoreline Use Permits are not required for facilities or activities covered by a real estate instrument.

(g) *Transfer of Permits.* Shoreline Use Permits are non-transferable. They become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.

(h) *Existing Facilities Now Under Permit.* Implementation of a Shoreline Management Plan shall consider existing permitted facilities and prior written Corps commitments implicit in their issuance. Facilities or activities permitted under special provisions should be identified in a way that will set them apart from other facilities or activities.

(1) Section 6 of Pub. L. 97-140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to December 31, 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on December 29, 1981, if such property is maintained in usable condition, and does not occasion a threat to life or property.

(2) In accordance with section 1134(d) of Pub. L. 99-662, any houseboat, boat-

house, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of November 17, 1986, cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after December 31, 1989, if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project.

(i) Such property is maintained in a usable and safe condition,

(ii) Such property does not occasion a threat to life or property, and

(iii) The holder of the permit is in substantial compliance with the existing permit.

(3) All such floating facilities and appurtenances will be formally recognized in an appropriate Shoreline Management Plan. New permits for these permitted facilities will be issued to new owners. If the holder of the permit fails to comply with the terms of the permit, it may be revoked and the holder required to remove the structure, in accordance with the terms of the permit as to notice, time, and appeal.

(i) *Facility Maintenance.* Permitted facilities must be operated, used and maintained by the permittee in a safe, healthful condition at all times. If determined to be unsafe, the resource manager will establish together with the permittee a schedule, based on the seriousness of the safety deficiency, for correcting the deficiency or having it removed, at the permittee's expense. The applicable safety and health prescriptions in EM 385-1-1 should be used as a guide.

(j) *Density of Development.* The density of private floating and fixed recreation facilities will be established in the Shoreline Management Plan for all portions of Limited Development areas consistent with ecological and aesthetic characteristics and prior written commitments. The facility density in Limited Development Areas should, if feasible, be determined prior to the development of adjacent private property. The density of facilities will not be more than 50 per cent of the Limited Development Area in which they are

located. Density will be measured by determining the linear feet of shoreline as compared to the width of the facilities in the water plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a Limited Development Area or a portion of a Limited Development area reaches maximum density, notice should be given to the public and facility owners in that area that no additional facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft. Docks should not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the prescribed level through attrition.

(k) *Permit Fees.* Fees associated with the Shoreline Use Permits shall be paid prior to issuing the permit in accordance with the provisions of § 327.30(c)(1). The fee schedule will be published separately.

APPENDIX A TO § 327.30—GUIDELINES FOR GRANTING SHORELINE USE PERMITS

1. General

a. Decisions regarding permits for private floating recreation facilities will consider the operating objectives and physical characteristics of each project. In developing Shoreline Management Plans, district commanders will give consideration to the effects of added private boat storage facilities on commercial concessions for that purpose. Consistent with established policies, new commercial concessions may be alternatives to additional limited development shoreline.

b. Permits for individually or group owned shoreline use facilities may be granted only in Limited Development Areas when the sites are not near commercial marine services and such use will not despoil the shoreline nor inhibit public use or enjoyment thereof. The installation and use of such facilities will not be in conflict with the preservation of the natural characteristics of the shoreline nor will they result in significant environmental damage. Charges will be made for Shoreline Use Permits in accordance with the separately published fee schedule.

c. Permits may be granted within Limited Development Areas for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating recreation facilities

when they will not create a safety hazard and inhibit public use or enjoyment of project waters or shoreline. A Corps permit is not required for temporary ice fishing shelters or duck blinds when they are regulated by a state program. When the facility or activity is authorized by a shoreline use permit, a separate real estate instrument is generally not required.

d. Group owned boat mooring facilities may be permitted in Limited Development Areas where practicable (e.g. where physically feasible in terms of access, water depths, wind protection, etc.).

2. Applications for Shoreline Use Permits

a. Applications for private Shoreline Use Permits will be reviewed with full consideration of the policies set forth in this and referenced regulations, and the Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be paid prior to issuing the permit. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage method, and construction materials; the type, size, location and ownership of the facility; expected duration of use; and an indication of willingness to abide by the applicable regulations and terms and conditions of the permit. Permit applications shall also identify and locate any land-based support facilities and any specific safety considerations.

b. Permits will be issued by the district commander or his/her authorized representative on ENG Form 4264-R (Application for Shoreline Use Permit) (appendix B). Computer generated forms may be substituted for ENG Form 4264-R provided all information is included. The computer generated form will be designated, "ENG Form 4264-R-E, Oct 87 (Electronic generation approved by USACE, Oct 87)".

c. The following are guides to issuance of Shoreline Use Permits:

(1) Use of boat mooring facilities, including piers and boat (shelters) houses, will be limited to vessel or watercraft mooring and storage of gear essential to vessel or watercraft operation.

(2) Private floating recreation facilities, including boat mooring facilities shall not be constructed or used for human habitation or in a manner which gives the appearance of converting Federal public property on which the facility is located to private, exclusive use. New docks with enclosed sides (i.e. boat-houses) are prohibited.

(3) No private floating facility will exceed the minimum size required to moor the owner's boat or boats plus the minimum size required for an enclosed storage locker of oars, life preservers and other items essential to

watercraft operation. Specific size limitations may be established in the project Shoreline Management Plan.

(4) All private floating recreation facilities including boat mooring facilities will be constructed in accordance with plans and specifications, approved by the resource manager, or a written certification from a licensed engineer, stating the facility is structurally safe will accompany the initial submission of the plans and specifications.

(5) Procedures regarding permits for individual facilities shall also apply to permits for non-commercial group mooring facilities.

(6) Facilities attached to the shore shall be securely anchored by means of moorings which do not obstruct the free use of the shoreline, nor damage vegetation or other natural features. Anchoring to vegetation is prohibited.

(7) Electrical service and equipment leading to or on private mooring facilities must not pose a safety hazard nor conflict with other recreational use. Electrical installations must be weatherproof and meet all current applicable electrical codes and regulations. The facility must be equipped with quick disconnect fittings mounted above the flood pool elevation. All electrical installations must conform to the National Electric Code and all state, and local codes and regulations. In those states where electricians are licensed, registered, or otherwise certified, a copy of the electrical certification must be provided to the resource manager before a Shoreline Use Permit can be issued or renewed. The resource manager will require immediate removal or disconnection of any electrical service or equipment that is not certified (if appropriate), does not meet code, or is not safely maintained. All new electrical lines will be installed underground. This will require a separate real estate instrument for the service right-of-way. Existing overhead lines will be allowed, as long as they meet all applicable electrical codes, regulations and above guidelines, to include compatibility and safety related to fluctuating water levels.

(8) Private floating recreation facilities will not be placed so as to interfere with any authorized project purposes, including navigation, or create a safety or health hazard.

(9) The district commander or his/her authorized representative may place special conditions on the permit when deemed necessary. Requests for waivers of shoreline management plan permit conditions based on health conditions will be reviewed on a case by case basis by the Operations Manager. Efforts will be made to reduce onerous requirements when a limiting health condition is obvious or when an applicant provides a doctor's certification of need for conditions which are not obvious.

(10) Vegetation modification, including but not limited to, cutting, pruning, chemical

manipulation, removal or seeding by private individuals is allowed only in those areas designated as Limited Development Areas or Protected Shoreline Areas. An existing (as of July 1, 1987) vegetation modification permit, within a shoreline allocation which normally would not allow vegetation modification, should be grandfathered. Permittees will not create the appearance of private ownership of public lands.

(11) The term of a permit for vegetation modification will be for five years. Where possible, such permits will be consolidated with other shoreline management permits into a single permit. The district commander is authorized to issue vegetation modification permits of less than five years for one-time requests or to aid in the consolidation of shoreline management permits.

(12) When issued a permit for vegetative modification, the permittee will delineate the government property line, as surveyed and marked by the government, in a clear but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan and the conditions of the permit. Other adjoining owners may also delineate the common boundary subject to these same conditions. This delineation may include, but is not limited to, boundary plantings and fencing. The delineation will be accomplished at no cost to the government.

(13) No permit will be issued for vegetation modification in Protected Shoreline Areas until the environmental impacts of the proposed modification are assessed by the resource manager and it has been determined that no significant adverse impacts will result. The effects of the proposed modification on water quality will also be considered in making this determination.

(14) The original of the completed permit application is to be retained by the permittee. A duplicate will be retained in the resource manager's office.

3. Permit Revocation

Permits may be revoked by the district commander when it is determined that the public interest requires such revocation or when the permittee fails to comply with terms and conditions of the permit, the Shoreline Management Plan, or of this regulation. Permits for duck blinds and ice fishing shelters will be issued to cover a period not to exceed 30 days prior to and 30 days after the season.

4. Removal of Facilities

Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to 36 CFR 327.20.

5. *Posting of Permit Number*

Each district will procure 5"×8" or larger printed permit tags of light metal or plastic for posting. The permit display tag shall be posted on the facility and/or on the land area covered by the permit, so that it can be visually checked, with ease in accordance with instructions provided by the resource manager. Facilities or activities permitted under special provisions should be identified in a way that will set apart from other facilities or activities.

APPENDIX B TO § 327.30—APPLICATION FOR SHORELINE USE PERMIT [RESERVED]

APPENDIX C TO § 327.30—SHORELINE USE PERMIT CONDITIONS

1. This permit is granted solely to the applicant for the purpose described on the attached permit.

2. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities and/or activities.

3. Ownership, construction, operation, use and maintenance of a permitted facility are subject to the Government's navigation servitude.

4. No attempt shall be made by the permittee to forbid the full and free use by the public of all public waters and/or lands at or adjacent to the permitted facility or to unreasonably interfere with any authorized project purposes, including navigation in connection with the ownership, construction, operation or maintenance of a permitted facility and/or activity.

5. The permittee agrees that if subsequent operations by the Government require an alteration in the location of a permitted facility and/or activity or if in the opinion of the district commander a permitted facility and/or activity shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the district commander to remove, alter, or relocate the permitted facility, without expense to the Government.

6. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes

any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.

7. Ownership, construction, operation, use and maintenance of a permitted facility and/or activity are subject to all applicable Federal, state and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

8. This permit does not convey any property rights either in real estate or material; and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility and/or activity.

9. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility and/or activity in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources values and in a manner so as to minimize the degradation of water quality.

10. The permittee shall remove a permitted facility within 30 days, at his/her expense, and restore the waterway and lands to a condition accepted by the resource manager upon termination or revocation of this permit or if the permittee ceases to use, operate or maintain a permitted facility and/or activity. If the permittee fails to comply to the satisfaction of the resource manager, the district commander may remove the facility by contract or otherwise and the permittee agrees to pay all costs incurred thereof.

11. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's vessel or watercraft and the storage, in enclosed locker facilities, of his/her gear essential to the operation of such vessel or watercraft.

12. Neither a permitted facility nor any houseboat, cabin cruiser, or other vessel moored thereto shall be used as a place of habitation or as a full or part-time residence or in any manner which gives the appearance of converting the public property, on which the facility is located, to private use.

13. Facilities granted under this permit will not be leased, rented, sub-let or provided to others by any means of engaging in commercial activity(s) by the permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility.

14. Floats and the flotation material for all docks and boat mooring buoys shall be fabricated of materials manufactured for marine use. The float and its flotation material shall be 100% warranted for a minimum of 8 years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads. All floats shall resist puncture and penetration and shall not be subject to damage by animals under normal conditions for the area. All floats and the flotation material used in them shall be fire resistant. Any float which is within 40 feet of a line carrying fuel shall be 100% impervious to water and fuel. The use of new or recycled plastic or metal drums or non-compartmentalized air containers for encasement or floats is prohibited. Existing floats are authorized until it or its flotation material is no longer serviceable, at which time it shall be replaced with a float that meets the conditions listed above. For any floats installed after the effective date of this specification, repair or replacement shall be required when it or its flotation material no longer performs its designated function or it fails to meet the specifications for which it was originally warranted.

15. Permitted facilities and activities are subject to periodic inspection by authorized Corps representatives. The resource manager will notify the permittee of any deficiencies and together establish a schedule for their correction. No deviation or changes from approved plans will be allowed without prior written approval of the resource manager.

16. Floating facilities shall be securely attached to the shore in accordance with the approved plans by means of moorings which do not obstruct general public use of the shoreline or adversely affect the natural terrain or vegetation. Anchoring to vegetation is prohibited.

17. The permit display tag shall be posted on the permitted facility and/or on the land areas covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the resource manager.

18. No vegetation other than that prescribed in the permit will be damaged, destroyed or removed. No vegetation of any kind will be planted, other than that specifically prescribed in the permit.

19. No change in land form such as grading, excavation or filling is authorized by this permit.

20. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void.

21. By 30 days written notice, mailed to the permittee by certified letter, the district commander may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to

comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee requests a hearing in writing to the district commander through the resource manager within the 30-day period, the district commander shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than 60 days from the date of the hearing request. Following the hearing, a written decision will be rendered and a copy mailed to the permittee by certified letter.

22. Notwithstanding the conditions cited in condition 21 above, if in the opinion of the district commander, emergency circumstances dictate otherwise, the district commander may summarily revoke the permit.

23. When vegetation modification on these lands is accomplished by chemical means, the program will be in accordance with appropriate Federal, state and local laws, rules and regulations.

24. The resource manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary to inspect facilities and/or activities under permit.

25. When vegetation modification is allowed, the permittee will delineate the government property line in a clear, but unobtrusive manner approved by the resource manager and in accordance with the project Shoreline Management Plan.

26. If the ownership of a permitted facility is sold or transferred, the permittee or new owner will notify the Resource Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within 30 days from the date of ownership transfer.

27. If permitted facilities are removed for storage or extensive maintenance, the resource manager may require all portions of the facility be removed from public property.

APPENDIX D TO § 327.30—PERMIT [RESERVED]

[55 FR 30697, July 27, 1990, as amended at 57 FR 21895, May 26, 1992; 57 FR 29220, July 1, 1992; 63 FR 35828, July 1, 1998]

EFFECTIVE DATE NOTE: The amendment to § 327.30 revising the last sentence of paragraph (k), published at 56 FR 29587, June 28, 1991, was deferred indefinitely. See 56 FR 49706, Oct. 1, 1991. The administrative charges contained in § 327.30, Shoreline Management on Civil Works Projects, published in the July 1, 1991 edition of the Code of Federal Regulations will remain in effect. Any future decisions affecting this regulation will be published in the FEDERAL REGISTER

§ 327.31

at a later date by the Corps of Engineers, Department of the Army. For the convenience of the user, the rule published on June 28, 1991, at FR page 29587, is set forth as follows:

§ 327.30 Shoreline Management on Civil Works Projects.

* * * * *

(k) * * * The Fee Schedule is published in § 327.31.

§ 327.31 Shoreline management fee schedule.

A charge will be made for Shoreline Use Permits to help defray expenses associated with issuance and administration of the permits. As permits become eligible for renewal after July 1, 1976, a charge of \$10 for each new permit and a \$5 annual fee for inspection of floating facilities will be made. There will be no annual inspection fee for permits for vegetative modification on Shoreline areas. In all cases the total administrative charge will be collected initially at the time of permit issuance rather than on a piecemeal annual basis.

[56 FR 61163, Dec. 2, 1991; 56 FR 65190, Dec. 16, 1991]

PART 328—REGULATION OF SEAPLANE OPERATIONS AT CIVIL WORKS WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Sec.

328.1 Purpose.

328.2 Applicability.

328.3 References.

328.4 Policy.

328.5 Guidelines for seaplane use of project waters.

328.6 Procedures.

328.7 Other authorities.

AUTHORITY: Sec. 4 of the Act of Dec. 22, 1944, 58 Stat. 889, as amended, (16 U.S.C. 460d).

SOURCE: 42 FR 59076, Nov. 15, 1977, unless otherwise noted.

§ 328.1 Purpose.

This regulation, in connection with the modification of the present prohibition of seaplane operations by the amendment to § 327.4 of title 36 of the

36 CFR Ch. III (7–1–99 Edition)

Code of Federal Regulations, is designed to provide uniform policies and criteria for designating Corps projects, or portions thereof, at which seaplane operations are prohibited or restricted; and to continue to protect the integrity and all authorized uses of such projects and the safety of users of such projects. As used in this regulation, *projects* or *Corps projects* means water resources development projects administered by the Chief of Engineers.

§ 328.2 Applicability.

This regulation is applicable to all Field Operating Agencies having Civil Works responsibilities.

§ 328.3 References.

(a) Title 36 CFR, part 327, Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers (38 FR 7552, March 23, 1973).

(b) ER 1105–2–507.

(c) ER 1130–2–400.

(d) ER 1145–2–301.

(e) ER 1145–2–303.

(f) ER 1165–2–400.

(g) ER 405–2–800 Series.

§ 328.4 Policy.

(a) The objective of Corps of Engineers resources management is to maximize public enjoyment and use of the lands, waters, forests, and associated recreational resources, consistent with their aesthetic and biological values. Such management includes efforts to preserve and enhance the environmental amenities that are the source of the recreational value associated with the project and to allow such other new and innovative uses of the projects that are not detrimental thereto.

(b) Seaplane operations at water resource development projects administered by the Chief of Engineers may involve hazards including, but not limited to, conflicting recreational activities, floating debris, and underwater hazards, which may be accentuated by the normal fluctuations of water levels.